

Code of Federal Regulations

TITLE 15--COMMERCE AND FOREIGN TRADE

CHAPTER IX--NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 922--NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

Subpart A--General

Sec.

- 922.1 Applicability of regulations.
- 922.2 Mission, goals, and special policies.
- 922.3 Definitions.
- 922.4 Effect of National Marine Sanctuary designation.

Subpart B--Site Evaluation List (SEL)

- 922.10 General.

Subpart C--Designation of National Marine Sanctuaries

- 922.20 Standards and procedures for designation.
- 922.21 Selection of active candidates.
- 922.22 Development of designation materials.
- 922.23 Coordination with States and other Federal agencies.
- 922.24 Congressional documents.
- 922.25 Designation determination and findings.

Subpart D--Management Plan Development and Implementation

- 922.30 General.
- 922.31 Promotion and coordination of Sanctuary use.

Subpart E--Regulations of General Applicability

- 922.40 Purpose.
- 922.41 Boundaries.
- 922.42 Allowed activities.
- 922.43 Prohibited or otherwise regulated activities.
- 922.44 Emergency regulations.
- 922.45 Penalties.
- 922.46 Response costs and damages.
- 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.
- 922.48 National Marine Sanctuary permits--application procedures and issuance criteria.
- 922.49 Notification and review of applications for leases, licenses,

permits, approvals, or other authorizations to conduct a prohibited activity.
922.50 Appeals of administrative action.

Subpart F--Monitor National Marine Sanctuary

922.60 Boundary.
922.61 Prohibited or otherwise regulated activities.
922.62 Permit procedures and criteria.

Subpart G--Channel Islands National Marine Sanctuary

922.70 Boundary.
922.71 Prohibited or otherwise regulated activities.
922.72 Permit procedures and criteria.

Appendix A to Subpart G of Part 922--Channel Islands National Marine Sanctuary Boundary Coordinates

Subpart H--Gulf of the Farallones National Marine Sanctuary

922.80 Boundary.
922.81 Definitions.
922.82 Prohibited or otherwise regulated activities.
922.83 Permit procedures and criteria.
922.84 Certification of other permits.

Appendix A to Subpart H of Part 922--Gulf of the Farallones National Marine Sanctuary Boundary Coordinates

Subpart I--Gray's Reef National Marine Sanctuary

922.90 Boundary.
922.91 Prohibited or otherwise regulated activities.
922.92 Permit procedures and criteria.

Subpart J--Fagatele Bay National Marine Sanctuary

922.100 Scope of regulations.
922.101 Boundary.
922.102 Prohibited or otherwise regulated activities.
922.103 Management and enforcement.
922.104 Permit procedures and criteria.

Subpart K--Cordell Bank National Marine Sanctuary

922.110 Boundary.
922.111 Prohibited or otherwise regulated activities.
922.112 Permit procedures and criteria.

Appendix A to Subpart K of Part 922--Cordell Bank National Marine
Sanctuary Boundary Coordinates

Subpart L--Flower Garden Banks National Marine Sanctuary

- 922.120 Boundary.
- 922.121 Definitions.
- 922.122 Prohibited or otherwise regulated activities.
- 922.123 Permit procedures and criteria.

Appendix A to Subpart L of Part 922--Flower Garden Banks National Marine
Sanctuary Boundary Coordinates

Appendix B to Subpart L of Part 922--Coordinates for the Department of
the Interior Topographic Lease Stipulations for OCS Lease Sale
112

Subpart M--Monterey Bay National Marine Sanctuary

- 922.130 Boundary.
- 922.131 Definitions.
- 922.132 Prohibited or otherwise regulated activities.
- 922.133 Permit procedures and criteria.
- 922.134 Notification and review.

Appendix A to Subpart M of Part 922--Monterey Bay National Marine
Sanctuary Boundary Coordinates

Appendix B to Subpart M of Part 922--Dredged Material Disposal Sites
Adjacent to the Monterey Bay National Marine Sanctuary

Appendix C to Subpart M of Part 922--Zones Within the Sanctuary Where
Overflights Below 1000 Feet Are Prohibited

Appendix D to Subpart M of Part 922--Zones and Access Routes Within the
Sanctuary Where the Operation of Motorized Personal Watercraft
Is Allowed

Subpart N--Stellwagen Bank National Marine Sanctuary

- 922.140 Boundary.
- 922.141 Definitions.
- 922.142 Prohibited or otherwise regulated activities.
- 922.143 Permit procedures and criteria.

Appendix A to Subpart N of Part 922--Stellwagen Bank National Marine
Sanctuary Boundary Coordinates

Subpart O--Olympic Coast National Marine Sanctuary

- 922.150 Boundary.
- 922.151 Definitions.

- 922.152 Prohibited or otherwise regulated activities.
- 922.153 Permit procedures and criteria.
- 922.154 Consultation with the State of Washington, affected Indian tribes, and adjacent county governments.

Appendix A to Subpart O of Part 922--Olympic Coast National Marine Sanctuary Boundary Coordinates

Subpart P--Florida Keys National Marine Sanctuary

- 922.160 Purpose.
- 922.161 Boundary.
- 922.162 Definitions.
- 922.163 Prohibited activities--Sanctuary-wide.
- 922.164 Additional activity regulations by Sanctuary area.
- 922.165 Emergency regulations.
- 922.166 Permits--application procedures and issuance criteria.
- 922.167 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

Appendix I to Subpart P of Part 922--Florida Keys National Marine Sanctuary Boundary Coordinates

Appendix II to Subpart P of Part 922--Existing Management Areas Boundary Coordinates

Appendix III to Subpart P of Part 922--Wildlife Management Areas Access Restrictions

Appendix IV to Subpart P of Part 922--Ecological Reserves Boundary Coordinates

Appendix V to Subpart P of Part 922--Sanctuary Preservation Areas Boundary Coordinates

Appendix VI to Subpart P of Part 922--Special-use Areas Boundary Coordinates and Use Designations

Appendix VII to Subpart P of Part 922--Areas To Be Avoided Boundary Coordinates

Appendix VIII to Subpart P of Part 922--Marine Life Rule As Excerpted From Chapter 46-42 of the Florida Administrative Code

Subpart Q--Hawaiian Islands Humpback Whale National Marine Sanctuary

Section

- 922.180 Purpose.
- 922.181 Boundary.
- 922.182 Definitions.
- 922.183 Allowed activities.
- 922.184 Prohibited activities.
- 922.185 Emergency regulations.
- 922.186 Penalties; appeals.

922.187 Interagency cooperation.

Appendix A to Subpart Q - Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas.

Authority: 16 U.S.C. 1431 et seq.

Source: 60 FR 66877, Dec. 27, 1995, unless otherwise noted.

Editorial Note: Nomenclature changes to part 922 appear at 62 FR 3789, Jan. 27, 1997; 62 FR 67724, Dec. 30, 1997.

Sec. 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all eleven National Marine Sanctuaries for which site-specific regulations appear in subparts F through P, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.1 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all twelve National Marine Sanctuaries for which site-specific regulations appear in subparts F through Q, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

Sec. 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, also known as the National Marine Sanctuaries Act (Act) the mission of the National Marine Sanctuary program (Program) is to identify, designate and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

(b) The goals of the Program are to carry out the mission to:

- (1) Identify and designate as National Marine Sanctuaries areas of the marine environment which are of special national significance;
- (2) Provide authority for comprehensive and coordinated conservation

and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) Support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) Enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(6) Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(7) Create models of, and incentives for, ways to conserve and manage these areas;

(8) Cooperate with global programs encouraging conservation of marine resources; and

(9) Maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

(c) To the extent consistent with the policies set forth in the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of a National Marine Sanctuary, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure effective management;

(d) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(e) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 et seq., and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa et seq. The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the

authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance. These guidelines are available from the Office of Ocean and Coastal Management at (301) 713-3125.

Sec. 922.3 Definitions.

Act means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 et seq., also known as the National Marine Sanctuaries Act.

Active Candidate means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

Benthic community means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.

Commercial fishing means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.

Conventional hook and line gear means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hind- or electrically operated, hand-held or mounted. This term does not include bottom longlines.

Cultural resources means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

Director means, except where otherwise specified, the Director of the Office of Ocean and Coastal Resource Management, NOAA, or designee.

Exclusive economic zone means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act, 16 U.S. 1801 et seq.

Fish wastes means waste materials resulting from commercial fish processing operations.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include "submerged cultural resources", and also include "historical properties," as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended.

Indian tribe means any American Indian tribe, band, group, or

community recognized as such by the Secretary of the Interior.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy.

Lightering means at-sea transfer of petroleum-based products, materials, or other matter from vessel to vessel.

Marine means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value.

National historic landmark means a district, site, building, structure or object designated as such by the Secretary of the Interior under the National Historic Landmarks Program (36 CFR part 65).

National Marine Sanctuary means an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

Regional Fishery Management Council means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.

Secretary means the Secretary of the United States Department of Commerce, or designee.

Shunt means to discharge expended drilling cuttings and fluids near the ocean seafloor.

Site Evaluation List (SEL) means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern

Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

Take or taking means: (1) For any marine mammal, sea turtle, or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct; (2) For any other marine mammal, sea turtle, or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. For the purposes of both (1) and (2) of this definition, this includes, but is not limited to, to collect any dead or injured marine mammal, sea turtle or seabird, or any part thereof; to restrain or detain any marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; to tag any sea turtle, marine mammal or seabird; to operate a vessel or aircraft or to do any other act that results in the disturbance or molestation of any marine mammal, sea turtle or seabird.

Tropical fish means fish of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which lives in a direct relationship with live bottom communities.

Vessel means a watercraft of any description capable of being used as a means of transportation in/ on the waters of a Sanctuary.
[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.4 Effect of National Marine Sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

- (a) Generally recognized principles of international law;
- (b) An agreement between the United States and the foreign state of which the person is a citizen; or
- (c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crew member of the vessel.

Subpart B--Site Evaluation List (SEL)

Sec. 922.10 General.

(a) The Site Evaluation List (SEL) was established as a comprehensive list of marine sites with high natural resource values and with historical qualities of special national significance that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries.

(b) The SEL is currently inactive. Criteria for inclusion of marine sites on a revised SEL will be issued, with public notice and opportunity to comment, when the Director determines that the SEL should be reactivated.

(c) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(d) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in Sec. 922.21, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

Subpart C--Designation of National Marine Sanctuaries

Sec. 922.20 Standards and procedures for designation.

In designating a National Marine Sanctuary, the Secretary shall apply the standards and procedures set forth in section 303 and section 304 of the Act.

Sec. 922.21 Selection of active candidates.

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in section 303 of the Act.

(b) Selection of a site as an Active Candidate shall begin the formal Sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and in newspapers in the area(s) of local concern. A brief written analysis describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designation standards and criteria set forth in the Act.

Sec. 922.22 Development of designation materials.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare the designation materials described in section 304 of the Act.

(b) If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional

Fishery Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Fishery activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as potentially subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in section 304(a)(5) of the Act shall be followed.

Sec. 922.23 Coordination with States and other Federal agencies.

(a) The Secretary shall consult and cooperate with affected States throughout the National Marine Sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant State officials prior to selecting any site on the SEL as an Active Candidate pursuant to Sec. 922.21, especially concerning the relationship of any site to State waters and the consistency of the proposed designation with a federally approved State coastal zone management program. For the purposes of a consistency review by States with federally approved coastal zone management programs, designation of a National Marine Sanctuary is deemed to be a Federal activity, which, if affecting the State's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved State coastal zone program as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR part 930, subpart.

(2) Ensure that relevant State agencies are consulted prior to holding any public hearings pursuant to section 304(a)(3) of the Act.

(3) Provide the Governor(s) of any State(s) in which a proposed Sanctuary would be located an opportunity to certify the designation or any of its terms as unacceptable as specified in section 304(b)(1) of the Act.

(b) The Secretary shall develop proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies in consultation with those agencies.

Sec. 922.24 Congressional documents.

In designating a National Marine Sanctuary, the Secretary shall prepare and submit to Congress those documents described in section 304 of the Act.

Sec. 922.25 Designation determination and findings.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare a written Designation Determination and Findings which shall include those findings and determinations described in section 303 of the Act.

(b) In addition to those factors set forth in section 303 of the Act, the Secretary, when making a designation determination, shall consider the Program's fiscal capability to manage the area as a National Marine Sanctuary.

Subpart D--Management Plan Development and Implementation

Sec. 922.30 General.

(a) The Secretary shall implement each management plan, and applicable regulations, including carrying out surveillance and enforcement activities and conducting such research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with Sanctuary management plans, the Secretary shall develop and implement site-specific contingency and emergency-response plans designed to protect Sanctuary resources. The plans shall contain alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

Sec. 922.31 Promotion and coordination of Sanctuary use.

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of National Marine Sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, or other persons to promote use of one or more Sanctuaries for research, monitoring and education, including coordination with the National Estuarine Research Reserve System.

Subpart E--Regulations of General Applicability

Sec. 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through P of this part is to implement the designations of the 11 National Marine Sanctuaries for which site specific regulations appear in subparts F through P of this part, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys

National Marine Sanctuary are found at Sec. 922.160.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.40 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through Q is to implement the designations of the 12 National Marine Sanctuaries for which site specific regulations appear in subparts F through Q, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at Secs. 922.160, and 922.180, respectively.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.41 Boundaries.

The boundary for each of the 11 National Marine Sanctuaries covered by this part is described in subparts F through P of this part, respectively.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.41 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.41 Boundaries.

The boundary for each of the 12 National Marine Sanctuaries covered by this part is described in subparts F through Q, respectively.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.42 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through P of this part, subject to any emergency regulations promulgated pursuant to Secs. 922.44, 922.111(c), or Sec. 922.165, subject to all prohibitions, regulations, restrictions, and conditions validly imposed

by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.42 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.42 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through Q, subject to any emergency regulations promulgated pursuant to Secs. 922.44, 922.111(c), 922.165, or 922.186, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

[62 FR 14815, Mar. 28, 1997]

Sec. 922.43 Prohibited or otherwise regulated activities.

Subparts F through P of this part set forth site-specific regulations applicable to the activities specified therein.

[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.43 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.43 Prohibited or otherwise regulated activities.

Subparts F through Q set forth site-specific regulations applicable to the activities specified therein.

[62 FR 14815, Mar. 28, 1997]

Sec. 922.44 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.

The provisions of this section do not apply to the Cordell Bank and Florida Keys National Marine Sanctuaries. See Secs. 922.111(c) and 922.165, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.44 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.44 Emergency Regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries. See Secs. 922.111(c), 922.165, and 922.186, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.45 Penalties.

(a) Each violation of the NMSA or FKNMSPA, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than \$ 100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions, and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.46 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

Sec. 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

(a) Leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of any National Marine Sanctuary shall not be terminated by the Director. The Director may, however, regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

(b) The prohibitions listed in subparts F through P of this part do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in this subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.48 National Marine Sanctuary permits--application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by subparts F through O of this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O of this part. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under Sec. 922.166.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O of this part should be addressed to the Director and sent to the address specified in subparts F through O of this part. An application must include:

(1) A detailed description of the proposed activity including a timetable for completion;

(2) The equipment, personnel and methodology to be employed;

(3) The qualifications and experience of all personnel;

(4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and

(5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary

to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in subparts F through O. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subparts L through P of this part if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P of this part, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, whichever is later;

(2) The applicant complies with the other provisions of this Sec. 922.49;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a

finding as to whether the activity for which an application is intended to be made is prohibited by subparts L through P of this part.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in subparts L through P of this part. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her pending review of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this Sec. 922.49 may be extended by the Director for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of Sec. 922.50.

[62 FR 4608, Jan. 30, 1997]

Sec. 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under Sec. 922.47; or, for those Sanctuaries described in subparts L through P, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) The conditioning, amendment, suspension or revocation of a

certification under Sec. 922.47; or

(iii) For those Sanctuaries described in subparts L through P, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(2) For those National Marine Sanctuaries described in subparts F through K, any interested person may also appeal the same actions described in paragraphs (a)(1) (i) and (ii) of this section. For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term "appellant" includes any such interested persons.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. For the Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

(2) The hearing officer shall give notice in the Federal Register of the time, place and subject matter of the hearing. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator.

(d) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing. The Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator or hearing office for good cause.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4608, Jan. 30, 1997]

Subpart Q, Part 922 - Hawaiian Islands Humpback Whale National Marine Sanctuary

Authority: The National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq., as amended, and the Hawaiian Islands National Marine Sanctuary Act subtitle C, title II, Pub. L. 102-587, as amended.

§ 922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the HINMSA and NMSA.

(b) These regulations may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

(c) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of such management plan or regulations

as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

(1) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

(2) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

(3) To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

(4) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

(5) To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

(b) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Kawaihae Boat Harbor & Small Boat Basin

Lanai

Kaumalapau Harbor

Manele Harbor

Maui

Lahaina Boat Harbor

Maalaea Boat Harbor

Molokai

Hale o Lono Harbor

Kaunakakai Harbor

Oahu

Kuapa Pond (Hawaii Kai)

(c) The coordinates of the lateral extents of each boundary area within the Sanctuary boundary appear in Appendix A of this subpart Q.

§ 922.182 Definitions.

(a) Acts means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301-2307 of Pub. L. 102-587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 et seq.).

Adverse impact means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

Alteration of the seabed means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

Habitat means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

Military activities means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

Sanctuary means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Sanctuary resource means any humpback whale, or the humpback whale's habitat within the Sanctuary.

Shoreline means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

Take or taking a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure a humpback whale, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 et seq., and 16 U.S.C. 1431 et seq.

§ 922.183 Allowed Activities.

(a) All activities except those prohibited by § 922.184 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to § 922.185, subject to the interagency cooperation provisions of section 304(d) of the NMSA [16 U.S.C. 1434(d)] and § 922.187 of this subpart, and subject to the liability established by section 312 of the NMSA and § 922.46 of this part. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this § 922.183 are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of

these regulations, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a)(1) through (a)(5) of § 922.184 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of these regulations are also included as allowed activities under the first sentence of paragraph (a) of this § 922.183. Paragraphs (a)(1) through (a)(5) of § 922.184 apply to these classes of activities unless--

(1) they are not subject to consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or

(2) upon consultation under section 304(d) of the NMSA and § 922.187 of this subpart, NOAA's findings and recommendations include a statement that paragraphs (a)(1) through (a)(5) of § 922.184 do not apply to the military activity.

(d) If a military activity described in paragraphs (b) or (c)(2) of this § 922.183 is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, the modified activity will be treated as a new military activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and § 922.187 of this subpart is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair the national defense, the Secretary of the military department concerned may request the Director that the activity proceed during consultation. If the Director denies such a request, the Secretary of the military department concerned may decide to proceed with the activity. In such case, the Secretary of the military department concerned shall provide the Director with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

§ 922.184 Prohibited activities.

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted.

(1) Approaching, or causing a vessel or other object to approach, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 et seq., and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 et seq.;

(2) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except as necessary for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA;

(3) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(4) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(5) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing any material or other matter outside the Sanctuary if the discharge or deposit subsequently enters and injures a humpback whale or humpback whale habitat, provided that such activity:

(i) requires a Federal or State permit, license, lease, or other authorization; and

(ii) is conducted:

(A) without such permit, license, lease, or other authorization, or

(B) not in compliance with the terms or conditions of such permit, license, lease, or other authorization.

(6) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

(b) The prohibitions in paragraphs (a)(1) through (a)(5) of this § 922.184 do not apply to activities necessary to respond to emergencies threatening life, property or the environment; or to activities necessary for valid law enforcement purposes. However, while such activities are not subject to paragraphs (a)(1) through (a)(5) of this § 922.184, this paragraph (b) does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

(c) Any Sanctuary fishery regulations shall not take effect in Hawaii State waters until established by the State Board of Land and Natural Resources.

§ 922.185 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii. Emergency regulations shall not take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

§ 922.186 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this subpart is subject to a civil penalty of not more than \$100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

(c) A person subject to an action taken for enforcement reasons for violation of these regulations or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR Part 904.

§ 922.187 Interagency Cooperation.

Under section 304(d) of the NMSA, Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director. The Federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director will attempt to provide coordinated review and analysis of all environmental requirements.

Appendix A to Subpart Q - Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas.

Appendix A provides a text and pictorial (see Figures 1-3) description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The lateral extents (bounds) of each boundary area are closed by straight lines defined by at least two points. It may be necessary to extend these lines beyond the defining points to intersect the actual 100 fathom contour or the shoreline. Each point corresponds to a bounds number indicated in Figure 2. Digital files of the Sanctuary boundary (available in three common formats, ESRI Shape File, MapInfo Table, and an ASCII Exchange Format) are available from the Sanctuary office in Kihei, Maui, at the address listed above or by calling (808) 879-2818. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as supplied by State of Hawaii through the Office of Planning GIS Office, the NOAA and State of Hawaii agreed upon lateral boundary and exclusion areas, and the 100 fathom isobath digitized from the following 1:80,000 scale NOAA nautical charts- 19327 - *West Coast of Hawaii* (9th ED, 4/29/89), 19347 - *Channels between Molokai, Maui, Lanai, and Kahoolawe* (17th ED, 12/13/97), 19351 - *Channels between Oahu, Molokai, and Lanai* (8th ED, 7/01/1989), 19357 - *Island of Oahu* (20th ED, 9/21/1996), and 19381 - *Island of Kauai* (8th ED, 7/17/1993)]. For the portion of the Lanai region of the HIHWNMS west of Chart 19351, [157°42.8' west] the 100 fathom contour was derived from the 1:250,000 chart 19340 - *Hawaii to Oahu* (24th ED, 1/09/1993)..

All digital digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

Sanctuary Boundary

A. As defined by the specific lateral boundaries in B, and except for excluded areas described in paragraph C of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams (see Figure 1):

1.To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

2.To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

3.To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

4.To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

5.To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

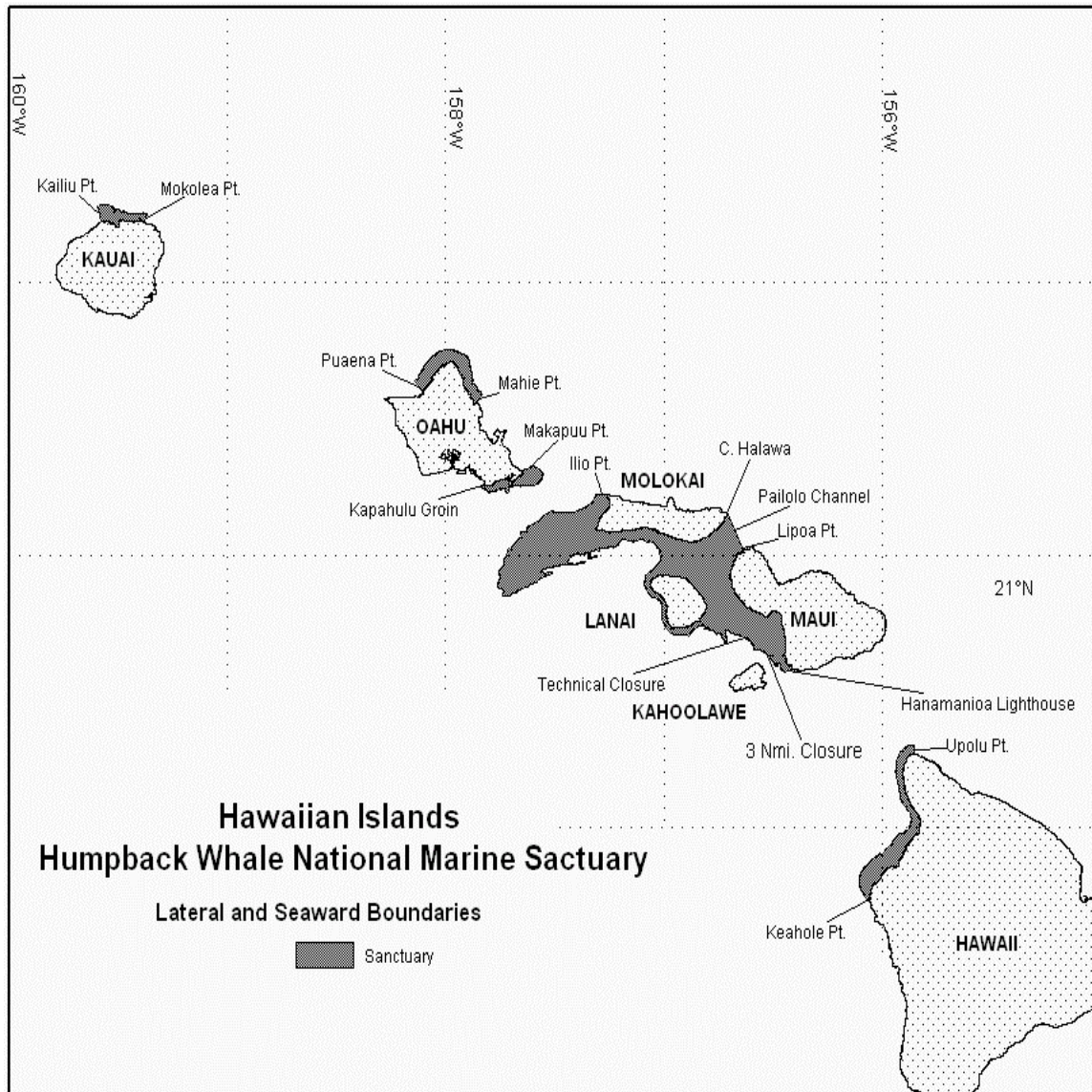


Figure 1.

B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Figure 2).

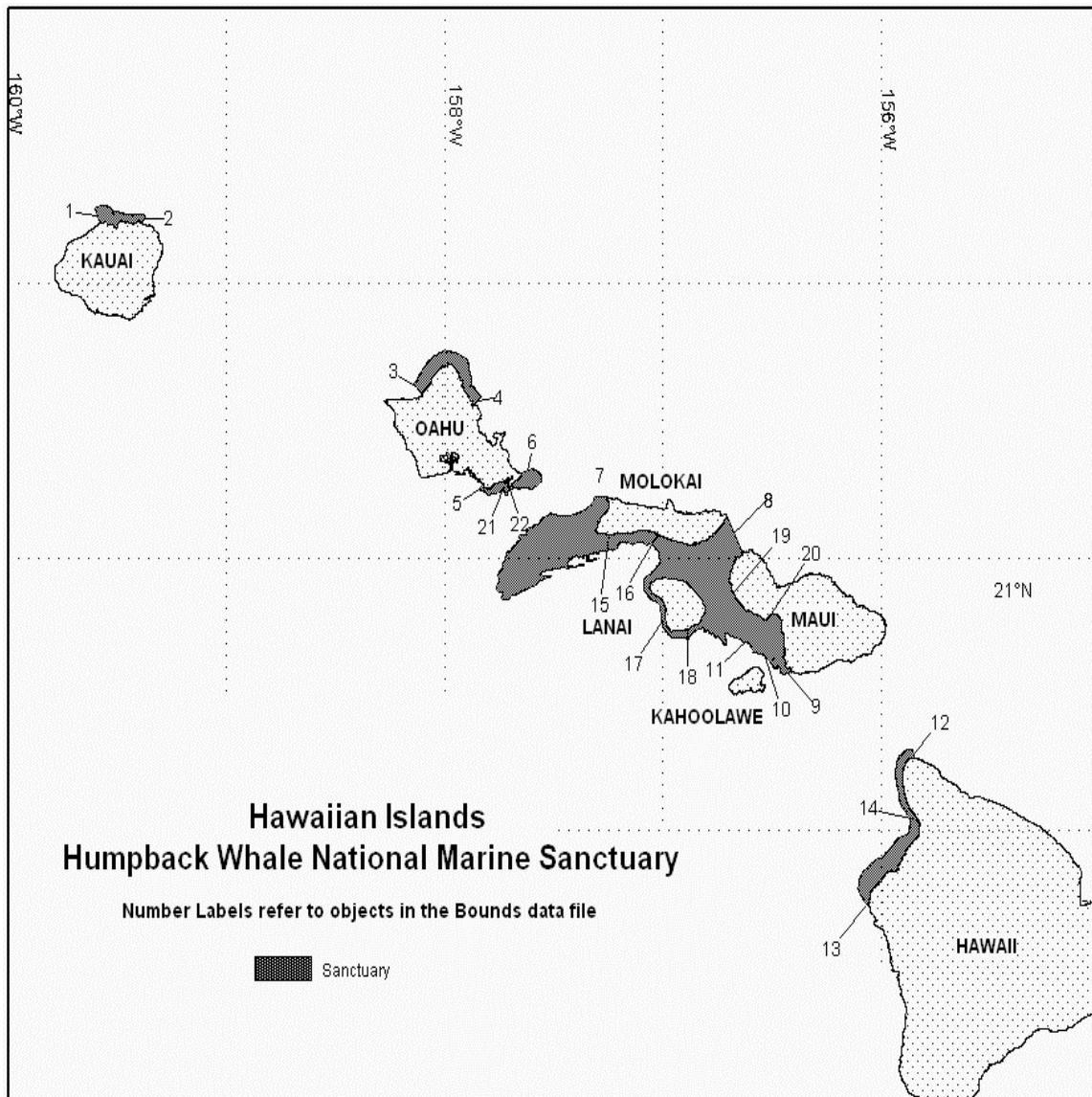


Figure 2.

Bound No. (Fig. 2)	Geographic Name	No. of Points	Latitude	Longitude
1	Kailiu Pt., Kauai	2	22°13'24.7" 22°16'33.5"	-159°34'52.2" -159°35'59.4"

2	Mokolea Pt., Kauai	2	22°13'29.9" 22°14'55.4"	-159°22'55.8" -159°22'19.3"
3	Puaena Pt., N. Oahu	2	21°38'24.6" 21°36'8.4"	-158°8'26.0" -158°6'24.5"
4	Mahie Pt., N. Oahu	2	21°33'37.3" 21°35'32.2"	-157°51'51.9" -157°50'5.5"
5	Kapahulu Groin, S. Oahu	3	21°15'5.7" 21°16'6.1" 21°16'6.2"	-157°50'27.5" -157°49'25.7" -157°49'23.8"
6	Makapuu Pt., S. Oahu	2	21°18'39.6" 21°19'44.7"	-157°38'56.7" -157°35'46.1"
7	Ilio Pt, Molokai	2	21°13'25.7" 21°13'27.0"	-157°18'45.8" -157°15'14.4"
8	Pailolo Channel, C. Halawa to Lipoa Pt.	2	21°1'29.8" 21°9'29.5"	-156°38'22.0" -156°42'37.2"
9	Hanamanoia Lighthouse, Maui	2	20°34'21.8" 20°34'58.4"	-156°26'51.1" -156°24'45.2"
10	3 Nmi. closure around Kahoolawe	51	20°35'58.1" 20°35'59.9" 20°36'3.9" 20°36'6.6" 20°36'16.3" 20°36'25.7" 20°36'34.6" 20°36'39.9" 20°36'43.8" 20°36'50.8" 20°36'59.0" 20°37'8.7" 20°37'18.1" 20°37'27.0" 20°37'35.5" 20°37'43.4" 20°37'50.9" 20°37'56.4" 20°37'59.0" 20°38'6.0" 20°38'8.6" 20°38'10.8" 20°38'17.2" 20°38'18.9"	-156°29'32.0" -156°29'33.0" -156°29'35.5" -156°29'36.9" -156°29'43.1" -156°29'49.9" -156°29'57.3" -156°30'2.2" -156°30'5.5" -156°30'12.1" -156°30'16.5" -156°30'22.7" -156°30'29.5" -156°30'36.8" -156°30'44.8" -156°30'53.4" -156°31'2.4" -156°31'10.0" -156°31'13.2" -156°31'22.7" -156°31'26.8" -156°31'29.9" -156°31'39.9" -156°31'43.0"

			20°38'23.4"	-156°31'48.4"
			20°38'30.3"	-156°31'58.0"
			20°38'36.6"	-156°32'7.9"
			20°38'42.4"	-156°32'18.3"
			20°38'43.4"	-156°32'20.5"
			20°38'46.4"	-156°32'25.9"
			20°38'51.5"	-156°32'36.7"
			20°38'56.0"	-156°32'47.7"
			20°38'59.8"	-156°32'59.1"
			20°39'3.0"	-156°33'10.7"
			20°39'4.0"	-156°33'15.7"
			20°39'4.4"	-156°33'17.0"
			20°39'5.3"	-156°33'21.1"
			20°39'6.8"	-156°33'28.7"
			20°39'8.6"	-156°33'40.7"
			20°39'8.9"	-156°33'44.4"
			20°39'9.7"	-156°33'49.6"
			20°39'10.1"	-156°33'53.8"
			20°39'11.0"	-156°34'0.3"
			20°39'12.1"	-156°34'12.4"
			20°39'12.5"	-156°34'24.4"
			20°39'12.4"	-156°34'25.4"
			20°39'12.6"	-156°34'30.5"
			20°39'12.2"	-156°34'42.6"
			20°39'11.8"	-156°34'47.7"
			20°39'11.7"	-156°34'48.9"
			20°39'11.3"	-156°34'55.8"
11	Technical Closure North of Kahoolawe	2	20°41'39.2" 20°41'45.0"	-156°37'7.5" -156°38'3.6"
12	Upolu Pt., Hawaii (Big Island)	2	20°16'5.3" 20°17'59.9"	-155°51'0.5" -155°51'17.2"
13	Keahole Pt., Hawaii (Big Island)	2	19°43'39.6" 19°43'41.5"	-156°3' 42.7" -156°4'14.5"

C. Excluded Ports and Harbors Bounds (see Figure 3)

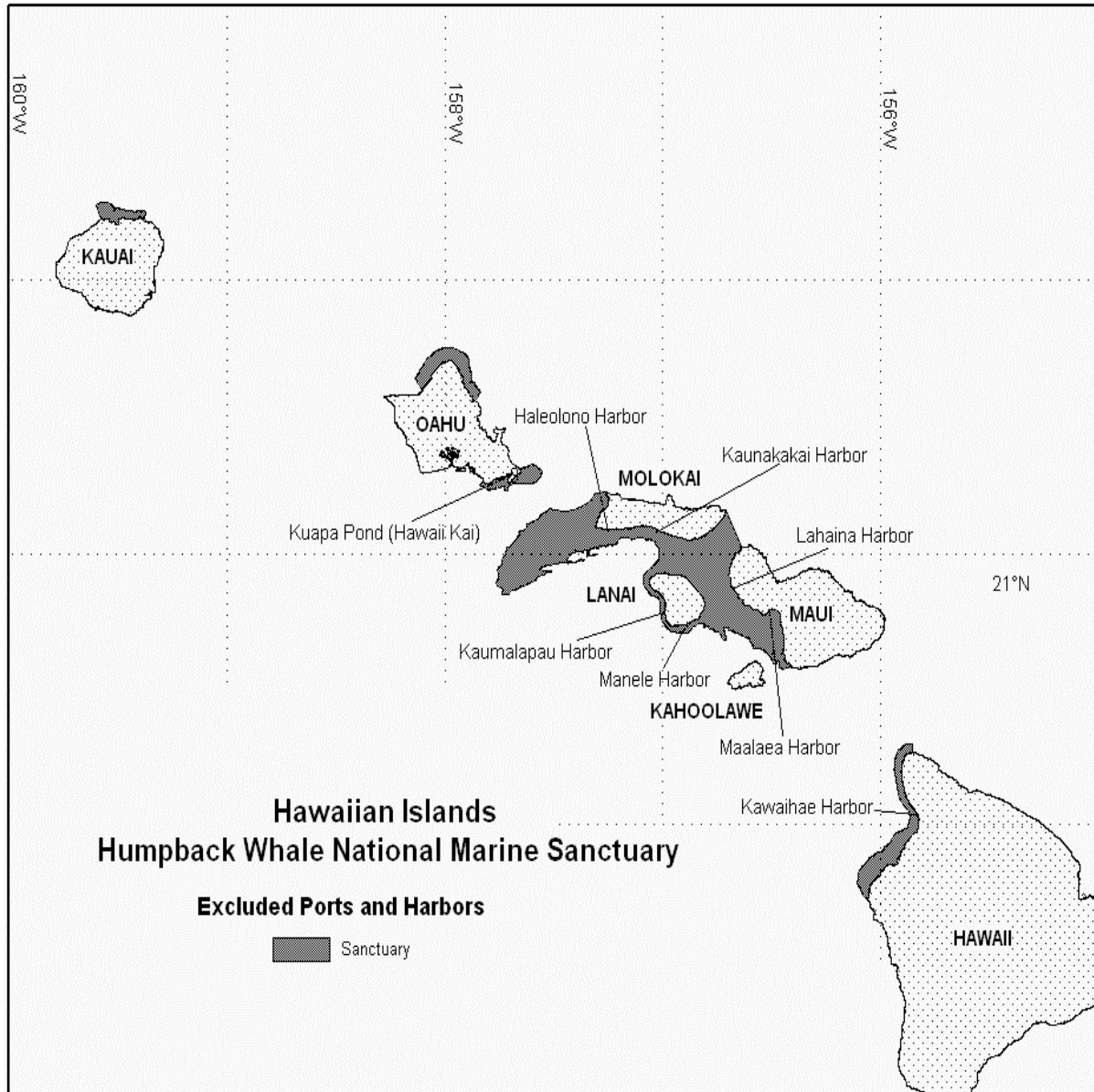


Figure 3.

Bound No. (Fig. 2)	Geographic Name	No. of Points	Latitude	Longitude
14	Kawaihae Harbor, Big Island exclusion	2	20°2'14.3" 20°2'25.3"	-155°50'2.5" -155°49'57.7"

15	Haleolono Harbor, Molokai exclusion	2	21°5'3.5" 21°5'4.8"	-157°14'58.6" -157°14'55.2"
16	Kaunakakai Harbor, Molokai exclusion	4	21°5'13.9" 21°4'49.2" 21°4'38.5" 21°5'7.4"	-157°1'35.7" -157°1'58.3" -157°1'41.2" -157°1'15.0"
17	Kaumalapau Harbor, Lanai exclusion	2	20°47'9.2" 20°47'1.1"	-156°59'32.2" -156°59'31.3"
18	Manele Harbor, Lanai exclusion	2	20°44'33.2" 20°44'35.2"	-156°53'12.9" -156°53'14.1"
19	Lahaina Harbor, Maui exclusion	2	20°52'18.3" 20°52'18.8"	-156°40'45.0" -156°40'44.0"
20	Maalaea Harbor, Maui exclusion	2	20°47'32.1" 20°47'24.8"	-156°30'35.0" -156°30'39.6"
21	Western closure Kuapa Pond (Hawaii Kai), Oahu	2	21°17'7.0" 21°17'6.5"	-157°43'7.7" -157°43'7.0"
22	Eastern closure Kuapa Pond (Hawaii Kai), Oahu	2	21°16'53.3" 21°16'51.9"	-157°42'42.7" -157°42'40.3"